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File No.: 121861

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Kristen Angelo,

Plaintiff,

v.

New Leaf Publishing Inc.,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Kristen Angelo ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against Defendant New Leaf Publishing Inc. ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein creates photographic images and owns the rights to these images which Plaintiff licenses for various uses including online and print publications.
3. Plaintiff has obtained U.S. copyright registrations covering many of Plaintiff's images and many others are the subject of pending copyright applications.
4. Defendant owns and operates a website known as www.nwleaf.com (the "*Website*").
5. Defendant, without permission or authorization from Plaintiff actively copied,

1 stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct
2 knowingly and in violation of the United States copyright laws.

3 **PARTIES**

4 6. Plaintiff Kristen Angelo is an individual who is a citizen of the State of
5 Washington and maintains a principal place of business 23335 91ST AVE S #OO204, Tacoma
6 in Pierce County, Washington.

7 7. On information and belief, Defendant New Leaf Publishing Inc., is a
8 Washington corporation with a principal place of business at 23335 91st Avenue South, Kent
9 in King County, Washington and is liable and responsible to Plaintiff based on the facts herein
10 alleged.

11 **JURISDICTION AND VENUE**

12 8. This Court has subject matter jurisdiction over the federal copyright
13 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

14 9. This Court has personal jurisdiction over New Leaf Publishing Inc. because New
15 Leaf Publishing Inc. maintains its principal place of business in Washington.

16 10. Venue is proper under 28 U.S.C. §1391(a)(2) because New Leaf Publishing Inc.
17 does business in this Judicial District and/or because a substantial part of the events or
18 omissions giving rise to the claim occurred in this Judicial District.

19 **FACTS COMMON TO ALL CLAIMS**

20 11. Plaintiff is a professional photographer by trade who is the legal and rightful
21 owners of photographs which Plaintiff licenses to online and print publications.

22 12. Plaintiff has invested significant time and money in building Plaintiff's
23 photograph portfolio.

24 13. Plaintiff has obtained active and valid copyright registrations from the United
25 States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many
26 others are the subject of pending copyright applications.

27 14. Plaintiff's photographs are original, creative works in which Plaintiff's own
28

1 protectable copyright interests.

2 15. The Website is popular and lucrative enterprises that purposefully displays
3 celebrity and/or news photograph including Plaintiff's copyrighted photograph.

4 16. The Website is monetized in that it contains paid advertisements and/or sells
5 merchandise to the public and, on information and belief, Defendant profits from these
6 activities.

7 17. On November 10, 2019 Plaintiff Kristen Angelo authored a photograph of
8 Moonmade Farms (the "Photograph"). A copy of the Photograph is attached hereto as Exhibit 1.

9 18. Plaintiff applied to the USCO to register the Photograph on November 24, 2020
10 under Application No. 1-9914284220.

11 19. The Photograph was registered by USCO on November 24, 2020 under
12 Registration No. VA 2-228-669.

13 20. Plaintiff observed the Photograph on Defendant's domain www.nwleaf.com on
14 November 24, 2020. A copy of Screengrab of Defendant's website including the Photograph is
15 attached hereto as Exhibit 2.

16 21. A copy of the Photograph was stored and displayed on Defendant's domain
17 www.nwleaf.com at the following URL: <https://www.nwleaf.com/california-leaf/>.

18 22. Without permission or authorization from Plaintiff, Defendant volitionally
19 selected, copied, stored and/or displayed Plaintiff copyright protected Photograph as set forth
20 in Exhibit "1" which is annexed hereto and incorporated in its entirety herein, on the Website.

21 23. On information and belief, the Photograph was copied, stored and displayed
22 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
23 "*Infringement*").

24 24. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed
25 tangible medium of expression that was sufficiently permanent or stable to permit it to be
26 communicated for a period of more than transitory duration and therefore constitutes a specific
27 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.* 508 F.3d 1146, 1160 (9th
28

1 Cir. 2007).

2 25. The Infringement is an exact copy of the entirety of Plaintiff's original image
3 that was directly copied and stored by Defendant on the Website.

4 26. On information and belief, Defendant takes an active and pervasive role in the
5 content posted on its Website, including, but not limited to copying, posting, selecting,
6 commenting on and displaying Plaintiff's Photograph.

7 27. On information and belief, the Photograph was volitionally posted to the
8 Website by Defendant.

9 28. On information and belief, Defendant is not registered with the United States
10 Copyright Office pursuant to 17 U.S.C. §512.

11 29. On information and belief, the Infringement were not posted at the direction of
12 a "user" as that term is defined in 17 U.S.C. §512(c).

13 30. On information and belief, Defendant was aware of facts or circumstances from
14 which the determination regarding the Infringement was apparent. Defendant cannot claim that
15 it was aware of the infringing activities, including the specific Infringement which form the
16 basis of this complaint, since such a claim would amount to only willful blindness to the
17 Infringement on the part of Defendant.

18 31. On information and belief, Defendant engaged in the Infringement knowingly
19 and in violation of applicable United States Copyright Laws.

20 32. On information and belief, Defendant has the legal right and ability to control
21 and limit the infringing activities on its Website and exercised and/or had the right and ability
22 to exercise such right.

23 33. On information and belief, Defendant monitors the content on its Website.

24 34. On information and belief, Defendant has received a financial benefit directly
25 attributable to the Infringement. Specifically, by way of the Infringement, the Website had
26 increased traffic to the and, in turn, realized an increase its advertising revenues and/or
27 merchandise sales.
28

35. On information and belief, a large number of people have viewed the unlawful copies of the Photograph on the Website.

36. On information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

37. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential market for the Photograph.

38. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

39. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

40. The Photograph is an original, creative works in which Plaintiff owns valid copyright properly registered with the United States Copyright Office.

41. Plaintiff has not licensed Defendant the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

42. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

43. Defendant's reproduction of the Photograph and display of the Photograph on the Website constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

44. Plaintiff is informed and believes and thereon alleges that the Defendants willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that they used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent or authority, by using them in the infringing articles on the Website.

45. As a result of Defendants' violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

46. As a result of the Defendants' violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.

47. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

JURY DEMAND

48. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendants infringed Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against each Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendants from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant

pursuant to 17 U.S.C. § 505;

e. for pre judgment interest as permitted by law; and

f. for any other relief the Court deems just and proper.

DATED: May 2, 2021

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